

**IN THE UNITED STATES BANKRUPTCY COURT FOR  
SOUTHERN DISTRICT OF MISSISSIPPI  
GULFPORT 6 DIVISIONAL OFFICE**

RE:

**DONNA MICHELLE MILLS,**

**Debtor.**

\*  
\*  
\*  
\*

**CASE NO.: 19-51435-KMS**

**MOTION FOR RELIEF FROM AUTOMATIC STAY**

**Capital One Auto Finance, a division of Capital One, N.A.**, (hereinafter "Capital One"), respectfully shows and represents unto this Court as follows:

1. On April 21<sup>st</sup>, 2011, Donna Mills (hereinafter "Debtor"), entered into a Retail Installment Contract (hereinafter "Contract") with Pat Peck Nissan (hereinafter "Dealership") granting a security interest in the following personal property:

**2011 Nissan Altima-4 Cyl. Sedan 4D S Vin Number:1N4AL2AP2BN427338**

Contemporaneously with its execution, the contract was assigned to Capital One, a copy of said Contract is annexed hereto and made part hereof by reference.

2. The granted security interest in the above described personal property was duly perfected by the issuance of a Certificate of Title, copy of which is annexed hereto and made part hereof by reference.

3. Capital One is the holder and owner of the referenced Contract and Certificate of Title.

4. Debtor has defaulted in pre-petition payments to Capital One under the terms of the contract in the sum of \$6,380.91.

5. Debtor has defaulted in post-petition payments under the terms of the aforementioned Contract in the sum of \$945.32. Per the attached NADA Valuation, the Retail Value of the above mentioned personal property is \$5,850.00 with the payoff of said contract being \$9,554.60 as of November 26<sup>th</sup>, 2019.

6. Warren A. Cuntz, Jr. was appointed Trustee of the estate of said Debtor, has qualified and is now acting as such Trustee.

7. Capital One is not listed as a Secured Creditor on the Debtor's Chapter 13 Plan.

8. Capital One Auto Finance, a division of Capital One, N.A. expressly determines that there is no reason for delay and expressly directs that this Order be entered as a Final Order against the Debtor and Trustee and is therefore immediately effective to terminate the automatic stay and shall not be subject to Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

**WHEREFORE, Capital One Auto Finance, a division of Capital One, N.A.,** respectfully moves the Court to enter an Order against the Debtor and Trustee terminating the automatic stay imposed by 11 U.S.C. 362 as regards the referenced personal property and allowing Movant to file a proof of claim for the Deficiency Balance, if any.

**William C. Poole, LLC  
Attorneys For  
Capital One Auto Finance,  
a division of Capital One, N.A.**

**BY: /s/ Wesley H. Blacksher  
WESLEY H. BLACKSHER BAR103026  
blacksherw@gmail.com  
For the Firm  
917 Western America Circle  
Suite 210  
Mobile, AL 36609  
(251) 344-5015**

**CERTIFICATE OF SERVICE**

I do hereby certify that on this the 2<sup>nd</sup> day of December, 2019, a copy of the foregoing document was served on the following:

Donna Michelle Mills  
120 E. Sunnybrook Road  
Carriere, MS 39426

Mary Schillesci McPherson  
2448 Highway 53 South  
Poplarville, MS 39470

Warren A. Cuntz T1, Jr.  
P.O. Box 3749  
Gulfport, MS 39505-3749

by ECF Filing or by mailing a copy of the same United States Mail, properly addressed and first class postage prepaid.

**/S/ Wesley H. Blacksher  
Wesley H. Blacksher /dsp**







## OTHER IMPORTANT AGREEMENTS

## 1. FINANCE CHARGE AND PAYMENTS

- How we will figure Finance Charge. We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- How we will apply payments. We may apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of the Amount Financed and to other amounts you owe under this contract in any order we choose.
- How late payments or early payments change what you must pay. We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- You may prepay. You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.

## 2. YOUR OTHER PROMISES TO US

- If the vehicle is damaged, destroyed, or missing. You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- Using the vehicle. You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- Security Interest. You give us a security interest in:
  - The vehicle and all parts or goods put on it;
  - All money or goods received (proceeds) for the vehicle;
  - All insurance, maintenance, service, or other contracts we finance for you; and
  - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.
 This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle.
- Insurance you must have on the vehicle. You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium of the insurance and a finance charge equal to the Annual Percentage Rate shown on the front of this contract or, at our option, the highest rate the law allows. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- What happens to returned insurance, maintenance, service, or other contract charges. If we obtain a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

## 3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- You may owe late charges. You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.

If you pay late, we may also take the steps described below:

- You may have to pay all you owe at once. If you break your promises (default), we may demand that you pay all you owe on this contract at once, subject to your right to redeem the vehicle described below. Default means:
  - You do not pay any payment on time;
  - You give false, incomplete, or misleading information on a credit application;
  - You start a proceeding in bankruptcy or one is started against you or your property; or
  - You break any agreements in this contract.

The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.

- You may have to pay collection costs. If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's fee and court costs as the law allows. The attorney's fee will not exceed 15% of the amount you owe.
- We may take the vehicle from you. If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.
- How you can get the vehicle back if we take it. If we repossess the vehicle, you may pay to get it back (redeem) by paying all payments that are past due when you redeem, any late charges, and any expenses we incurred related to retaking the vehicle, holding it, and preparing it for sale. After you redeem, you must make the remaining payments under this contract. Your right to redeem ends when we sell the vehicle.
- We will sell the vehicle if you do not get it back. If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.
- What we may do about optional insurance, maintenance, service, or other contracts. This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

- Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

## 5. Applicable Law

Federal law and the law of the state of our address shown on the front of this contract apply to this contract.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

## ARBITRATION CLAUSE

## PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS

- EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
- IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
- DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Clause, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or lease of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Clause shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a class action. You may choose one of the following arbitration organizations and its applicable rules: the National Arbitration Forum, Box 50191, Minneapolis, MN 55405-0191 ([www.naf-journal.com](http://www.naf-journal.com)), the American Arbitration Association, 335 Madison Ave., Floor 10, New York, NY 10017-4805 ([www.adr.org](http://www.adr.org)), or any other organization that you may choose subject to our approval. You may get a copy of the rules of these organizations by contacting the arbitration organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law in making an award. The arbitration hearing shall be conducted in the federal district in which you reside unless the Creditor-Seller is a party to the claim or dispute. In each case the hearing will be held in the federal district where this contract was executed. We will advance your filing, administration, service or case management fee and your arbitrator or hearing fee all up to a maximum of \$2500, which may be reimbursed by decision of the arbitrator at the arbitrator's discretion. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Clause, then the provisions of this Arbitration Clause shall control. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000, or includes an award of injunctive relief against a party, that party may request a new arbitration under the rules of the arbitration organization by a three-arbitrator panel. The appealing party requesting new arbitration shall be responsible for the filing fee and other arbitration costs subject to a final determination by the arbitrators of a fair apportionment of costs. Any arbitration under this Arbitration Clause shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and not by any state law concerning arbitration.

You and we retain any rights to self-help remedies, such as repossession. You and we retain the right to seek remedies in small claims court for disputes or claims where that court's jurisdiction, unless such action is transferred, removed or appealed to us. However, we reserve the right to arbitrate by using self-help remedies or filing suit. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Clause shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Clause shall be unenforceable.



December 27, 2016

Capital One Auto Finance  
7933 Preston Road  
Plano, TX 75024  
1-800-227-3863

## ACCOUNT MODIFICATION TERMS & AGREEMENT

DONNA MILLS  
120 E SUNNYBROOK RD  
CARRIERE, MS 39426-7811

Account Number: [REDACTED]  
Vehicle: 11 NISSAN ALTIMA  
VIN: 1N4AL2AP2BN427338

This Account Modification Terms & Agreement (the "Agreement") amends and supplements the Credit Sale Agreement entered into on 04/21/2011 (the "Contract") for the purchase of the vehicle referenced above (the "Vehicle") by and between DONNA MILLS (called "you" and "your" in this Agreement) and Capital One Auto Finance (called "we" or "us" in this Agreement), the current servicer of the Contract.

At your request, we have agreed to modify the terms of your account with us as follows, which you accept by signing below. This modification will be made effective on your account for 12/27/2016, and your first payment under the modified terms of your account will be due on 01/20/2017.

	Original Terms	Modified Terms
Monthly Payment Amount	\$295.41	\$236.33
Payment Due Day	20th	20th
Annual Percentage Rate (APR)	13.44%	9.44%
Account Term	72 months	39 months

By signing below, you acknowledge that your outstanding account balance as of December 27, 2016 is as follows and agree to pay this balance in full plus the additional interest that will accrue on your account and any fees that are assessed to your account, less the waived amount(s) noted below.

	Principal	Accrued Unpaid Interest	Unpaid Late Fees	Unpaid Other Fees	Total
Account Balance as of 12/27/2016	\$7,923.15	\$26.22	\$140.00	\$365.00	\$8,454.37
(Amounts Waived)*	\$0.00	(\$26.19)	(\$0.00)	(\$0.00)	(\$26.19)
Remaining Balance After Modification	\$7,923.15	\$0.03	\$140.00	\$365.00	\$8,428.18

\*\$26.19 will be waived as part of your account modification.

Initial:

DONNA MILLS

(continued on next page)

Capital One Auto Finance is a division of Capital One, National Association, and services the following Capital One affiliated company: Onyx Acceptance Corporation.

HDSH Agreement Exception [REDACTED]

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December 27, 2016

Capital One Auto Finance  
7933 Preston Road  
Plano, TX 75024  
1-800-227-3863

## ACCOUNT MODIFICATION TERMS & AGREEMENT

By signing below, you also understand and agree to the following:

- Except as expressly modified in this Agreement, the Contract contains the entire agreement between you and us, and you hereby ratify and confirm all of the terms of the Contract not modified by this Agreement, which remain in full force and effect.
- We may resume collection activity, including possible repossession of your vehicle, if your account becomes delinquent.
- If your account term was extended, you may pay more interest over the life of your account as a result of this modification.
- Interest accrues on your account daily. We estimated the amount of interest that will accrue over the remaining term of your account after this modification and used that amount in determining your new monthly payment amount. However, the total amount you will actually pay over the remaining term of your account will depend on the amount and timing of your payments.
- Any unpaid late fees and unpaid other fees that are not explicitly waived as noted above are still due and payable. Unpaid late fees and unpaid other fees are not included in determining your monthly payment amount but must be paid by the end of your account term.
- This Agreement does not extend any third party payment insurance coverage or any insurance or debt cancellation products included in the purchase price of the Vehicle. You are responsible for extending the insurance coverage to your new account maturity date and notifying us of the change.

Signed &amp; Accepted By:

  
DONNA MILLS

Date:

12-30-2016

Signed &amp; Accepted By:

  
Subbu Rajasimhan  
Capital One Auto Finance

Date: December 27, 2016

Capital One Auto Finance is a division of Capital One, National Association, and services the following Capital One affiliated company: Onyx Acceptance Corporation.

HDSH Agreement Exception

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# CERTIFICATE OF TITLE

Form

STATE OF MISSISSIPPI

ORIGINAL

VEHICLE IDENTIFICATION NUMBER	MAKE	YEAR	MODEL	BODY	TITLE NUMBER
1N4AL2AP2BN427338	NISS	2011	ALT	4D	F864333-01

TITLE DATE	DATE OF FIRST SALE FOR USE NEW ONLY	NO. CYL.	NEW / USED	TYPE OF VEHICLE	PASS. OR GVW
06022011	04212011	04	X	PASS	000

ODOMETER - TENTHS NOT INCLUDED

000026

ACTUAL MILEAGE

OWNER

MILLS DONNA  
120 E SUNNYBROOK RD  
CARRIERE MS 39426

1ST LIENHOLDER (OR OWNER IF NO LIEN)

CAPITAL ONE AUTO FINANCE  
P O BOX 255605  
SACRAMENTO CA 95865

DATE:

MONTH | DAY | YEAR

04/21/2011

2ND LIENHOLDER

DATE:

MONTH | DAY | YEAR

LIEN SATISFACTION: THE UNDERSIGNED HOLDER OF ABOVE DESCRIBED LIEN(S) ON THE MOTOR VEHICLE DESCRIBED HEREON HEREBY ACKNOWLEDGES SATISFACTION THEREOF

1ST LIEN \_\_\_\_\_ BY \_\_\_\_\_  
(LIENHOLDER) (SIGNATURE AND TITLE)

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_\_

2ND LIEN \_\_\_\_\_ BY \_\_\_\_\_  
(LIENHOLDER) (SIGNATURE AND TITLE)

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_\_

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND THIS

THE 02 DAY OF JUNE 20 11



CONTROL NUMBER

STATE TAX COMMISSION

The Mississippi State Tax Commission hereby certifies that on application duly made, the person named herein is registered by this office as the lawful owner of the vehicle described subject to the liens or security interests as may subsequently be filed with the State Tax Commission. This certificate of title is issued pursuant to the Mississippi Motor Vehicle Title Law Section 63-21-1, Mississippi Code of 1972, and subject to the provisions thereof.

VOID IF ALTERED

## N.A.D.A. Official Used Car Guide Vehicle Valuation

Print Date: November 26, 2019

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Customer: Mills, Donna  
File No.: COAF-1263609

Vehicle Description: 2011 NISSAN ALTIMA-4 CYL. Sedan 4D S  
VIN: 1N4AL2AP2BN427338

### Base Values

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Retail: \$ 5850.00      Wholesale/Trade-in: \$ 3875.00

### Optional Equipment/Adjustments

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Estimated Miles 112500      \$ 0.00

### Total Adjusted N.A.D.A. Used Car Guide Values

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Retail: \$ 5850.00      Retail/Wholesale Average: \$ 4862.50

Reference 11/2019 Southeastern